

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

HAROLD B. WILSON, and GRACY )  
S. SEDLAK, )

8:13CV130

Plaintiffs, )

v. )

FRANK HOPKINS, )

Defendant. )

**MEMORANDUM  
AND ORDER**

This matter is before the court on Plaintiff Gracy Sedlak's ("Plaintiff") Notice of Appeal, which includes a request to proceed in forma pauperis on appeal. (Filing No. [32](#).)

On November 7, 2013, the court conducted an initial review of Plaintiffs' Complaint. (Filing No. [20](#).) The court determined that Plaintiffs' claim that Article I, § 29 of the Nebraska Constitution violates the Equal Protection Clause of the United States Constitution was foreclosed by the Eighth Circuit Court of Appeals' opinion in [Citizens for Equal Protection v. Bruning](#), 455 F.3d 859 (8th Cir. 2006). Accordingly, the court dismissed Plaintiffs' claim that they are being "denied the right to marry the person of [their] choosing" in violation of the Equal Protection Clause of the United States Constitution. (Filing No. [20](#) at CM/ECF p. 7.) The court allowed Plaintiffs to file an amended complaint on other claims. (*Id.*)

Approximately eight months later, on July 11, 2014, Plaintiff Gracy Sedlak filed a notice of appeal. (Filing No. [32](#).) The notice of appeal is expressly taken from the court's order dismissing Plaintiffs' claim that Article I, § 29 is unconstitutional. As set forth in Rule 4, a notice of appeal "must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." [Fed. R. App. P. 4\(a\)\(1\)\(A\)](#). This time limit is mandatory and jurisdictional, and failure to file a timely notice of appeal deprives an appellate court of jurisdiction. *See, e.g., Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 462-64 (8th Cir. 2000) (citations omitted).

Plaintiff's notice of appeal is obviously untimely. In addition, it is filed more than 30 days after the 30-day appeal period expired, meaning that the court's authority under [Fed. R. App. P. 4\(a\)\(5\)](#) to extend the time to file a notice of appeal for "excusable neglect or good cause" has also expired.

Plaintiff was permitted to proceed in forma pauperis in this matter. Therefore, she could proceed on appeal in forma pauperis without further authorization, unless the court certifies that the appeal is not taken in good faith or finds that she is not otherwise entitled to proceed in forma pauperis. [Fed. R. App. 24\(a\)\(3\)](#). Because Plaintiff's notice of appeal is untimely, the court certifies that the appeal is not taken in good faith and denies her request to proceed in forma pauperis on appeal.

IT IS THEREFORE ORDERED that:

1. The clerk's office shall not process Plaintiff Gracy Sedlak's appeal.
2. Plaintiff Gracy Sedlak may not proceed on appeal in forma pauperis.
3. The clerk's office is directed to provide a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

DATED this 15<sup>th</sup> day of July, 2014.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge

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